Palmetto Sash & Door Company, Inc. *and* International Woodworkers of America, AFL-CIO-CLC. Case 11-CA-9862

February 18, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Upon a charge filed on May 4, 1981, by International Woodworkers of America, AFL-CIO-CLC, herein called the Union, and duly served on Palmetto Sash & Door Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 11, issued a complaint and notice of hearing on May 26, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 16, 1980, following a Board election in Case 11-RC-4891, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about January 16, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so; and that, commencing on or about January 16, 1981, and at all times thereafter to date, Respondent has failed and refused, and continues to fail and refuse, to provide the Union with information with respect to names, job classifications, wage rates, incentives, bonus and monetary compensation, and insurance or pension programs. On June 5, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 8, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment.[2] Subsequently, on September 28, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint Respondent contends that the complaint and notice of hearing fails to state a claim upon which relief may be granted and therefore should be dismissed in its entirety; that, although the Union received a majority of the ballots cast in the election, the employees did not thereby designate the Union as their bargaining representative; that the Union is not the properly designated bargaining representative in the unit; that its refusal to bargain and denial of information requested by the Union did not violate the Act; that allegations of the complaint and notice of hearing which are not specifically admitted in Respondent's answer are denied; and that Respondent demands strict proof of the allegations in the complaint and notice of hearing.

In his Motion for Summary Judgment, counsel for the General Counsel maintains that Respondent is attempting to relitigate issues raised and determined adversely to it in the representation case, Case 11-RC-4891; that Respondent does not allege in its answer newly discovered or previously unavailable evidence or special circumstances; and that all issues raised by Respondent were or could have been litigated in the prior representation proceeding and no special circumstances are alleged which would require the Board to reexamine the decision in the representation proceeding. Additionally, counsel for the General Counsel requests that the Board strike the first, third, and fourth affirmative defenses in Respondent's answer; strike Respondent's denial in its answer of paragraphs 17, 18, 19, and 20; strike Respondent's partial denial in its answer of paragraphs 9, 13, 15, 16, and 17; and deem all allegations of the complaint to be true in accordance with the General Counsel's motion to strike. We agree with the counsel for the General

[1] Official notice is taken of the record in the representation proceeding, Case 11-RC-4891, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] Full title: "Motion of General Counsel To Strike Portions of Respondent's Answer to Complaint and Notice of Hearing and Motions for Summary Judgment."

Counsel that Respondent is attempting to raise and relitigate issues raised and determined adversely to it in the representation proceeding.

Our review of the record herein, including Case 11-RC-4891, discloses that pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 11 an election was conducted in an appropriate unit of Respondent's production and maintenance employees and truckdrivers located in Orangeburg, South Carolina, on July 24, 1980. Of the total number of votes cast, 16 were for, and 12 were against, the Union. There were no challenged ballots. The Employer filed objections to the conduct of the election.[3]

On August 15, 1980, the Regional Director for Region 11 directed a hearing to resolve the issues raised by the Employer's objections. On September 29, 1980, the Hearing Officer issued her report recommending that the Employer's objections be overruled and that the Union be certified. On December 16, 1980, the Board issued a Decision and Certification of Representative (not published in volumes of Board Decisions) adopting the Hearing Officer's report.

On or about January 6, 1981, the Union, by letter, requested that a collective-bargaining meeting be held with Respondent on certain dates during the week of February 15. Additionally, the letter requested information concerning names, job classifications, dates of hire, wage rates, incentive or merit wage system, bonus system and any other monetary compensation, and insurance or pension programs. By letter dated January 16, 1981, Respondent stated that the election results were invalid, that the election was improperly certified, and that the Union had not been fairly and freely elected by an uncoerced majority of employees. The letter additionally stated that:

> In order to obtain a court review of this matter, the Company hereby declines to meet with you for purposes of collective bargaining unless and until such time as court review establishes that your union is, in fact, the fairly and properly selected representative of the employees of Palmetto Sash & Door.
>
> Your request for information will therefore be held pending the outcome of any court review that is obtained.

By letter dated January 28 the Union renewed its request for bargaining and for the information it requested in its January 6 letter to Respondent. By telegram dated February 18, 1981, the Union demanded that Respondent meet for purposes of collective bargaining during the week of March 15, 1981. By letter dated February 23 Respondent notified the Union that its position had not changed since its initial letter, dated January 16, which refused the Union's request for information and a meeting. Respondent reiterated its view that the election results were not properly certified. The letter also stated that:

> In order to obtain review of the certification, the Company declines and refuses your request to meet for purposes of bargaining. Of course, if court review should establish that the election results in this matter were properly certified, the Company would then be prepared to meet and bargain in good faith.

Thereafter, on May 4, 1981, the Union filed the instant unfair labor practice charge.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding.[5] We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

[3] The Employer's objections asserted that union representatives engaged in electioneering in the vicinity of the polls while they were open; that the Union made oral statements that the U.S. Government and the Board supported the Union; that the Union falsely stated that employees voting for the Union could never be fined and would never participate in a strike against their will; that the Union falsely stated that the Board and court prevented the Employer from changing wage schedules, benefits, or privileges after the Union won the election; that if the Union won the election guaranteed wage and benefit increases would result; that the Union intimidated, harassed, coerced, and physically threatened those employees who did not support the Union; that employees had to sign with the Union or the Employer would discharge and discriminate against them; that the Union promised promotions and benefits if they voted for the Union; that the Union injected racial prejudice in the campaign; that the Union misrepresented the law regarding obligation of membership, validity of cards, the obligation to pay dues, strikes, and the Employer's right to replace strikers; and that the Union offered, as well as illegally paid, money and other valuable items to entice employees into voting for the Union.

[4] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[5] As previously noted, Respondent's response to the Union's request for bargaining and for information indicated its desire to test the validity of the Union's certification by seeking review of the certification by a United States court of appeals.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Palmetto Sash & Door Company, Inc., is a South Carolina corporation with a plant located in Orangeburg, South Carolina, where it is engaged in the manufacture and distribution of millwork items. During the past year, a representative period, the Employer shipped from its Orangeburg, South Carolina, plant, directly to points outside the State of South Carolina, finished products valued in excess of $50,000. During the same period, the Employer received at its Orangeburg, South Carolina, plant goods and raw materials directly from points outside the State of South Carolina valued in excess of $50,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Woodworkers of America, AFL–CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees including truckdrivers employed at the Employer's Orangeburg, South Carolina, facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On July 24, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 11, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on December 16, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about January 6, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 16, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit. Commencing on or about January 16, 1981, and continuing at all times thereafter to date, Respondent has failed and refused, and continues to fail and refuse, to provide the Union with information with respect to names, job classifications, wage rates, incentives, bonus and monetary compensation, and insurance or pension programs.

Accordingly, we find that Respondent has, since January 16, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and has failed and refused to provide the Union with the information it requested, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided

by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Palmetto Sash & Door Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Woodworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees including truckdrivers employed at the Employer's Orangeburg, South Carolina, facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 16, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 16, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By failing and refusing on or about January 16, 1981, and at all times thereafter, to provide the Union with information with respect to names, job classifications, wage rates, incentives, bonus and monetary compensation, and insurance or pension programs, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Palmetto Sash & Door Company, Inc., Orangeburg, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Woodworkers of America, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees including truckdrivers employed at the Employer's Orangeburg, South Carolina, facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Furnish, upon request of the Union, information with respect to names, job classifications, wage rates, incentives, bonus and monetary compensation, and insurance or pension programs.

(c) Post at the Employer's Orangeburg, South Carolina, facility copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent im-

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

mediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Woodworkers of America, AFL–CIO–CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT fail or refuse to provide the Union with information with respect to job classifications, wage rates, incentives, bonus and monetary compensation, and insurance or pension programs.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees including truckdrivers employed at the Employer's Orangeburg, South Carolina, facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, upon request, provide the Union with information with respect to names, job classifications, wage rates, incentives, bonus and monetary compensation, and insurance or pension programs.

PALMETTO SASH & DOOR COMPANY, INC.